



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2015-0989

RIN 1625-AA00

Safety Zone; Unexploded Ordnance Detonation; Passage Key, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone within a 2000-ft radius of an ordnance detonation area. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the unexploded ordnance detonation. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port St. Petersburg.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER] through December 18, 2015. For the purposes of enforcement, actual notice will be used from November 6, 2015 through [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0989 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule,

call or e-mail Boatswain's Mate First Class Tyrone J. Stafford, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228-2191 ext. 8307, e-mail Tyrone.j.stafford@uscg.mil.

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest". Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard was not aware of the ordinance removal operation or details needed to implement a safety zone in time to publish an NPRM and to receive public comments. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by November 06, 2015 to ensure the protection of personnel, vessels, and the marine environment from potential hazards created by the unexploded ordnance detonation.

We are issuing this temporary final rule and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register** for the same reasons discussed above. The need for this safety zone has been deemed necessary as the detonation of unexploded ordnance will occur during the dates specified in this document.

The purpose of this event is to clear any unexploded ordnance from a former gunnery training site. The Passage Key Air-to Ground Gunnery Range area was formerly used for arial training during World War II. The U.S. Army Corps of Engineers USACE will search for and destroy any ordinance found in the vicinity of Passage Key with controlled explosives. The safety zone will incorporate a 2000-ft buffer area outside of the investigation and detonation area. The U.S. USACE will be responsible for the detonation of ordnance within the specified area.

### **III. Legal Authority and Need for Rule**

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of this rule is to protect the personnel, vessels, and the marine environment in the navigable waters within the safety zone.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from November 06, 2015 through December 18, 2015. The safety zone will include waters within a 2000-ft radius of the unexploded ordnance detonation zone around the Passage Key Air-to-Ground Gunnery Range located in Manatee County, FL, identified by several law enforcement vessels showing flashing blue lights. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port St. Petersburg or a designated representative.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders

(E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around the safety zone. The safety zone will only be enforced for a total of 36 days between the hours of 6 a.m. and 6 p.m., in a location where commercial vessel traffic is expected to be minimal. Commercial vessel traffic may transit the safety zone to the extent compatible with public safety if authorized by the Captain of the Port or designated representatives. The Coast Guard will provide advance notification of the safety zone to the local community by a Local Notice to Mariners.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management

Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting no more than 36 days. It will prohibit entry within all navigable waters within a 2000-ft radius of an unexploded ordnance detonation zone identified by law enforcement vessels showing flashing blue lights in the vicinity of Passage Key Air-to-Ground Gunnery Range located in Manatee County, FL. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0989 to read as follows:

§ 165.T07-0989 Safety Zone; Unexploded Ordnance Detonation; Passage Key, FL.

(a) Regulated areas. The following regulated area is a safety zone; all waters within a 2000-ft radius of the unexploded ordnance detonation zone around the Passage Key Air-to-Ground Gunnery Range located in Manatee County, FL, identified by several law enforcement vessels showing flashing blue lights.

(b) Definition. The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard boat coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officials designated by or assisting the Captain of the Port St. Petersburg in the enforcement of the regulated areas.

(c) Enforcement period. This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 18, 2015. For purposes of enforcement, actual notice will be used from November 6, 2015 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(d) Regulations. (1) All persons and vessels desiring to enter or remain within the regulated area may contact the Captain of the Port St. Petersburg by telephone at (727) 824-7524, or a designated representative via VHF radio on channel 16, to request authorization.

- (2) If authorization to enter or remain within the regulated area is granted by the

Captain of the Port St. Petersburg or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port St. Petersburg or a designated representative. Recreational vessels authorized to enter the regulated area may be subject to boarding and inspection of the vessel and persons onboard.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, and/or on-scene designated representatives.

Dated: November 10, 2015

G. D. Case,  
Captain, U.S. Coast Guard,  
Captain of the Port, St. Petersburg

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